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State: Fla.

Ex-Cop Vows Negligence Suit if Orlando Refuses to Pay Comp Benefits: Top [2017-08-21]

A former Orlando, Florida, police officer who developed post-traumatic stress disorder after recovering bodies from the Pulse nightclub shooting spree in June 2016 is contemplating a negligence suit because the city won't agree to workers' compensation benefits, his attorney said.

Gerry Realin, 37, last month won his fight for early retirement benefits from the Orlando Police Pension Board.

But the \$56,000 he will earn annually for the rest of his life — 80% of his \$70,000-a-year salary — is not enough to sustain Realin, his wife and two small children, Maitland claimants' attorney Geoff Bichler said.

Realin filed two petitions for workers' compensation benefits with the Office of Judges of Compensation Claims a few weeks after an ISIS sympathizer killed 49 people and wounded scores of others inside Pulse on June 12, 2016.



One of the petitions was for PTSD and the other for “disabling arterial and cardiovascular hypertension and/or heart disease.”

His attorneys dropped the latter claim after the city recently agreed to cover Realin's hypertension-related medical expenses, Bichler said. The PTSD claim is scheduled for mediation on Sept. 12.

“This is a groundbreaking case. It's the first of its kind that's gotten to this stage in Florida,” Bichler said. “People are looking at this case for direction to see how to manage these issues. Frankly I think this is something the whole country is going to have to grapple with.”

Realin was part of an eight-member hazmat team that bagged the 49 bodies and was exposed to unimaginable horror, his attorney said.

Bichler said the city of Orlando has denied responsibility for Realin's workers' compensation claim and noted that Florida does not compensate first responders for mental injuries not accompanied by a physical injury.

That could change, however, with the recent reintroduction of a bill that would compensate first responders diagnosed with PTSD without a physical injury. The bill would allow workers prove they have PTSD using a preponderance-of-the-evidence standard instead of the more stringent clear-and-convincing evidence standard applied to other occupational disease claims.

In an Aug. 1 letter to the city's workers' compensation defense attorneys, Humberto Valdes and Steven McKillop, Bichler put the city on “formal notice” for such “egregious violations of my client's rights,” including harassment and retaliation, defamation of character and publication of medical records.

The letter says the lack of an “amicable resolution” will open the door to a negligence lawsuit and a constitutional challenge over Florida's refusal to compensate first responders without physical injuries.

Valdes and McKillop did not respond to emails from WorkCompCentral.

Bichler noted in the letter that his firm last year won two constitutional challenges to Florida's workers' compensation

system in the cases of Bradley Westphal v. City of St. Petersburg and Martha Miles v. City of Edgewater Police Department.

In Westphal, the state Supreme Court ruled Florida's 104-week limitation on temporary total disability benefits was unconstitutional. In Miles, the 1st District Court of Appeal declared the statutory limits on the compensation of claimants' attorneys unconstitutional because it deprived her of legal representation.

"Normal people will never be exposed to tragic horror like a dead baby or decapitation or mass casualty event," Bichler said. "You don't need PTSD coverage for regular working people. In this day and age we live in, our first responders are exposed to things no one could have imagined 10 to 15 years ago. You can't train people to be exposed to mass terrorist attacks."

State Sen. Victor Torres, D-Kissimmee, said the Pulse massacre and meeting the Realin family inspired him to introduce his original PTSD bill, SB 1088, during the 2017 legislative session. The bill unanimously passed the Senate Banking and Insurance Committee but died in the Appropriations Subcommittee on General Government.

Torres prefiled SB 126, which includes the same provisions, in advance of the 2018 legislative session that convenes in January.

"We should be there for our first responders as they are for us and our families all the time," said Torres, a Marine Corps veteran and 20-year member of the New York Transit Police. "Police officers are exposed to these horrific situations. Every day we leave our homes, we're saying goodbye to our spouses and children and we expect to come back home with no issues or problems."

A bill analysis and fiscal impact statement on Torres' first PTSD bill said it would result in a "small" increase in workers' compensation costs, according to an analysis by the National Council on Compensation Insurance.

"A small impact in this context is defined as an impact on overall system costs of less than 1%, which is less than \$36 million," the analysis states.

SB 1088 was opposed by the American Insurance Association and Florida League of Cities over its unknown fiscal impact and potential proliferation of claims by lessening the evidentiary standard.

Gerry Realin's wife, Jessica, said in a telephone interview Friday that having to "fight the system" has exacerbated her husband's PTSD. She notes that his pension is not enough to sustain the household and that his health insurance costs \$1,700 a month.

"We wouldn't ask these questions if a first responder was shot or burned. You'd want them to get the attention they deserve," she said. "This (PTSD) is the same thing. You just can't see it."

The PTSD bill has gained new urgency, she said, following the Florida suicide on July 12 of Marion County Deputy Adam Rendall, who suffered from untreated PTSD.

"On the heels of that and what's going on around the country, our nation really needs to take a hard look at how we value our first responders," Jessica Realin said. "We're currently having to deal with domestic terrorism. We need to give our first responders the best tools so they can take care of us."